

REMARKS

Claims 7-16 are presently pending in the application.

At the outset, Applicants note that the Examiner has indicated that only some of the certified copies of the priority documents have been received. However, there is only one priority document for the present application, JP 2000-218528, a certified copy of which was provided to the International Bureau in connection with the International stage of this application (International Application No. PCT/JP01/06189). For the Examiner's convenience, attached is a copy of a "Notification Concerning Submission or Transmittal of Priority Document," which demonstrates that the certified copy was received by the International Bureau on August 31, 2001. Acknowledgement of receipt of the certified copy is respectfully requested.

Claims 1-6 have been canceled and the subject matter incorporated into claims 7-16 as follows. Claim 7 incorporates subject matter from claims 1 and 5, and claim 8 incorporates subject matter from claim 1. More specifically, the description of the total oxygen and nitrogen contents in Phases A and B, Wao, Wan, Wbo, and Wbn, are not essential to the present invention (see, for example, the description at page 7, line 15 to page 12, line 4 of the specification), and thus are no longer recited in the independent claim. Additionally, the subject matter from claim 2 has been incorporated into claims 9 and 13, from claim 3 into claims 10 and 14, from claim 4 into claims 11 and 15, and from claim 6 into claims 12 and 16. No new matter has been added by these amendments.

Applicants acknowledge and appreciate the Examiner's indication in Paper No. 4 that claims 5 and 6 are only objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form. The Examiner acknowledges that none of the prior art of record teaches or suggests the invention of claim 5, in which there is both an oxygen content and a nitrogen content with $0 < W_o < 10 \text{ wt\%}$, $0 < W_n < 10 \text{ wt\%}$ and $0.5 \text{ wt\%} \leq W_o +$

$W_n \leq 10$ wt%. Regarding claim 6, the Examiner acknowledges that while the prior art teaches that an additive X may be oxygen, nitrogen, phosphorus, or fluorine, there is no teaching or suggestion that these materials may be combined, nor that the total of the oxygen content, nitrogen content, and the content of fluorine, sulfur, and/or phosphorus is 0.5 to 10 wt% of the alloy particle.

However, the Examiner has rejected claims 1-4 under 35 U.S.C. § 102(a) as being anticipated by each of WO 00/41256 (WO '256) and U.S. Patent No. 6,599,662 of Chiang ("Chiang"), which are substantially identical. The Examiner argues that WO '256 and Chiang each disclose a mixed metal alloy in which one component of the alloy has an oxygen content in excess of 1.0 wt % with one element in the alloy but not with the other element in the alloy. Therefore, the Examiner concludes that the total oxygen content of one element in the alloy is greater than 1.0 wt% and the oxygen content in the other metal element is inherently less than 0.5 wt %. The oxidizing element allegedly may be a rare earth element and the metal-rich element may be one such as Bi, Sb, and Sn, and alloys such as SbTi and SnTi are taught. The degree of surrounding recited in claim 3 is unspecified, the Examiner contends, and thus can be a partial surrounding. Therefore, the Examiner argues that in the mixture of alloys in WO '256 and Chiang, adjacent elemental components, such as a mixture of Sb and Ti, will be such that each element is at least partially surrounded by the other element. Further, the surrounding need not be limited to surrounding at the surface of the first phase, and therefore may be a distal surrounding of the alternate particles in the mixture. The Examiner concludes that the prior art inherently has a degree of surrounding of the two constituents in the alloy. Finally, the Examiner argues that since only one of the two elemental phases in the alloys is disclosed to have an

oxygen content and the other alloy does not include any oxygen, the ratio of the oxygen present in the first phase relative to the second phase will be greater than 4.

By this amendment, the subject matter of claim 5, which the Examiner acknowledges is not taught or suggested by the prior art of record, has been incorporated into new independent claim 7, and all of the remaining claims 8-16 depend directly or indirectly from claim 7. Accordingly, the § 102(a) rejections are rendered moot and reconsideration and withdrawal of the rejections are respectfully requested.

Based on the preceding Amendments and Remarks, it is respectfully submitted that all of the pending claims are patentably distinct over the prior art of record and in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,
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(Date)

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